

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

[73 FR 67287, Nov. 13, 2008]

#### §§ 4.202–4.308 [Reserved]

#### GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 70 FR 11825, Mar. 9, 2005, unless otherwise noted.

#### § 4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is:

(1) For most documents, the date of mailing or the date of personal delivery; or

(2) For a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e), the date that the Board receives the motion.

(b) *Serving notices of appeal and pleadings.* Any party filing a notice of appeal or pleading before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery or mailing.

(1) Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party.

(2) Where a party is represented by more than one attorney, service on any one attorney is sufficient.

(3) The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time

prescribed for filing and serving a document:

(1) The day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included;

(2) The last day of the period is to be included, unless it is a nonbusiness day (*e.g.*, Saturday, Sunday, or Federal holiday), in which event the period runs until the end of the next business day; and

(3) When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal holidays, and other nonbusiness days are excluded from the computation.

(d) *Extensions of time.* (1) The Board may extend the time for filing or serving any document except a notice of appeal.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

#### § 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receiving the notice of docketing. The appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receiving the appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other interested parties. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

#### **§ 4.312**

(b) The appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) BIA is considered an interested party in any proceeding before the Board. The Board may request that BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

#### **§ 4.312 Board decisions.**

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse, or set aside any proposed finding, conclusion, or order of an administrative law judge, Indian probate judge, or BIA official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

#### **§ 4.313 Amicus curiae; intervention; joinder motions.**

(a) Any interested person or Indian tribe desiring to intervene, to join other parties, to appear as amicus curiae, or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. The Board may grant the permission or relief requested for specified purposes and subject to limitations it established. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

#### **43 CFR Subtitle A (10–1–10 Edition)**

#### **§ 4.314 Exhaustion of administrative remedies.**

(a) No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

#### **§ 4.315 Reconsideration of a Board decision.**

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

#### **§ 4.316 Remands from courts.**

Whenever any matter is remanded from any Federal court to the Board for further proceedings, the Board will remand the matter to an administrative law judge, an Indian probate judge, or BIA. In the alternative, to the extent the court's directive and time limitations permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

#### **§ 4.317 Standards of conduct.**

(a) *Inquiries about cases.* All inquiries about any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the